

**IN THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2006 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 94 DB 2012
v.	:	
	:	Attorney Registration No. 22618
WILLIS W. BERRY, JR.,	:	
Respondent	:	(Philadelphia)

**ORDER**

**PER CURIAM:**

**AND NOW**, this 9<sup>th</sup> day of April, 2014, upon consideration of the Report and Recommendations of the Disciplinary Board dated October 30, 2013, respondent's objections and exceptions and response thereto, the request for oral argument is denied and it is hereby

ORDERED that Willis W. Berry, Jr., is suspended from the Bar of this Commonwealth for a period of one year and one day and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola  
As Of 4/9/2014

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 94 DB 2012
Petitioner	:	
	:	
v.	:	Attorney Registration No. 22618
	:	
WILLIS W. BERRY, JR.	:	
Respondent	:	(Philadelphia)

REPORT AND RECOMMENDATIONS OF  
THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES  
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on June 19, 2012, Office of Disciplinary Counsel charged Willis W. Berry, Jr., with violations of the Rules of Professional Conduct. Respondent filed an Answer to Petition on July 23, 2012.

A disciplinary hearing was held on October 11 and December 11, 2012, before a District I Hearing Committee comprised of Chair Sarah Wyatt, Esquire, and Members Amy Lachowicz, Esquire, and Peter C. Buckley, Esquire. Respondent was represented by Samuel C. Stretton, Esquire. At the October 11 hearing, Joint Stipulations

of Fact, Law and Exhibits were admitted into evidence. Petitioner moved into evidence Exhibits P-1 through P-18 and P-19 through P-24. Petitioner did not call any witnesses. Respondent called 19 character witnesses and testified on his own behalf. At the hearing on December 11, Respondent called two witnesses and moved into evidence 14 exhibits. Petitioner introduced Exhibit P-25.

Following the submission of briefs by the parties, the Committee filed a Report on May 15, 2013, concluding that Respondent violated the Rules as contained in the Petition for Discipline, and recommending that he be suspended for a period of one year and one day.

Respondent filed a Brief on Exceptions on May 31, 2013, and requested oral argument.

Petitioner filed a Brief Opposing Exceptions on June 17, 2013.

Oral argument was held on July 12, 2013, before a three-member panel of the Disciplinary Board.

This matter was adjudicated by the Disciplinary Board at the meeting on July 27, 2013.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of an attorney

admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent is Willis W. Berry, Jr. He was born in 1942 and was admitted to practice law in the Commonwealth in 1976. His current attorney registration address is 1535 W. Girard Avenue, Philadelphia PA 19130. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has no prior attorney discipline in Pennsylvania.

4. At the time of the filing of the Petition for Discipline, Respondent was a judge of the Court of Common Pleas of Philadelphia County, having served since 1996. He retired from judicial office in August 2012, because of reaching the mandatory retirement age of 70.

5. By Order dated July 15, 2009 ("the Suspension Order"), the Court of Judicial Discipline ("CJD") suspended Respondent from his judicial office without pay for a period of four months, the suspension to commence on August 16, 2009.

6. The Suspension Order was preceded by an Opinion and Order of the CJD dated June 25, 2009. The CJD concluded, *inter alia*, that Respondent had brought the judicial office into disrepute and had engaged in conduct that violated Section 17(b) of Article V of the Pennsylvania Constitution.

7. The CJD found that Respondent was "operating a commercial real estate business out of judicial chambers in the Criminal Justice Center in Philadelphia for 12 years - discontinuing the operation only when he got caught" and that the "operation was not small or incidental" as Respondent owned "16 properties, several of which were multi-unit rental properties occupied by an unspecified number of tenants." The CJD

specifically found that Respondent's judicial secretary assisted him in the day-to-day operations concerning his properties by engaging in activities that utilized court resources.

8. On March 15, 1993, Ms. Denise Cleveland, now known as Denise Jackson, slipped and fell on the sidewalk adjacent to a property located at 1533 West Girard Avenue, Philadelphia, Pennsylvania (the "Property".)

9. Ms. Jackson sustained injuries and received emergency medical treatment for her injuries at Saint Joseph's Hospital.

10. After Ms. Jackson had received medical treatment for her injuries, she and her current husband, Oscar Jackson, to whom she was not married at that time, met with Respondent at his law office, which was located at 1535 West Girard Avenue, Philadelphia, adjacent to the Property where Ms. Jackson slipped and fell.

11. Ms. Jackson described to Respondent the slip and fall incident, and Respondent agreed to represent Ms. Jackson in pursuing any claims she had arising from the slip and fall that occurred on March 15, 1993.

12. Respondent did not convey his fee for representation.

13. Prior to Ms. Jackson's slip and fall incident, Respondent had made an offer to purchase the Property.

14. The Property had been owned by Andre Hines, who died on September 3, 1992. Mr. Hines died intestate.

15. At the time of Ms. Jackson's slip and fall, Mr. Hines' family members had not raised an estate or sought appointment as administrator of Mr. Hines's estate.

16. After Ms. Jackson's slip and fall and continuing through February 1995, Mr. Hines's family members had still not raised an estate or sought appointment as administrator of Mr. Hines's estate.

17. In February 1995, Respondent arranged to have Mr. Henry Reddy appointed administrator of Mr. Hines's estate for the purpose of filing a lawsuit on behalf of Ms. Jackson against the estate.

18. On February 9, 1995, the Register of Wills granted Letters of Administration for the estate of Andre Hines to Mr. Reddy. The Property was an asset of the estate.

19. On February 22, 1995, Respondent filed a Complaint on behalf of Ms. Jackson with the Philadelphia Court of Common Pleas. Ms. Jackson's signature appeared on the Verification attached to the Complaint.

20. Mr. Reddy was served with the Complaint in his capacity as administrator.

21. Mr. Reddy did not retain an attorney to represent the Estate in the Cleveland lawsuit.

22. The Estate did not file an answer to the Complaint.

23. Respondent took action to have a default judgment entered against the Estate.

24. On July 27, 1995, the Court entered a default judgment against the Estate.

25. Respondent had Ms. Jackson sign a document titled "General Release", which provided that Ms. Jackson agreed to settle her claims arising from the slip and fall incident against the Estate in return for the Property.

26. Ms. Jackson signed the General Release.

27. Respondent prepared a Deed that transferred the Property from the Estate to Ms. Jackson ("the Jackson Deed").

28. On July 21, 1995, Mr. Reddy signed the Jackson Deed in his capacity as administrator of the Estate, and the Deed was recorded by the Recorder of Deeds on November 27, 1995.

29. Ms. Jackson's address on the Jackson Deed was listed as that of the Property (1533 West Girard Avenue), instead of 2829 West Lehigh Avenue, Philadelphia, which was her address at the time the Deed was prepared and filed.

30. Because Ms. Jackson's address on West Lehigh was not listed on the Jackson Deed, Ms. Jackson did not receive from the Recorder of Deeds a copy of the Deed after it was filed with the Recorder of Deeds.

31. Ms. Jackson signed a Deed ("the Reddberry Deed") transferring the Property from Ms. Jackson to Reddberry Development Corporation.

32. Ms. Jackson went to Respondent's office on September 26, 1995.

33. Respondent hand-wrote a \$1,500 check made payable to Ms. Jackson, dated the check September 26, 1995, placed the check in an envelope and handed the envelope to Ms. Jackson.

34. Respondent told Mrs. Jackson that she could cash the check at Respondent's bank and to have an employee from the bank call him if she had a problem cashing the check.

35. Ms. Jackson and Mr. Jackson went to Respondent's bank and cashed the check.

36. The Reddberry Deed was recorded by the Recorder of Deeds on December 27, 1995.

37. On October 3, 1995, Respondent filed a Praecipe to have the Cleveland lawsuit marked as settled, discontinued, and ended.

38. In 2007, Ms. Jackson received a telephone call from Nancy Phillips, a reporter for the Philadelphia Inquirer. Ms. Phillips arranged to meet with Ms. Jackson to review paperwork related to the Property and the transfers of ownership that occurred in 1995.

39. Ms. Jackson was shown, *inter alia*, the Complaint for the Cleveland lawsuit, the General Release, the Jackson Deed, and the Reddberry Deed.

40. On September 4, 2007, Ms. Jackson commenced a lawsuit against Respondent that alleged that he had engaged in fraudulent misrepresentation or nondisclosure during his representation of Ms. Jackson in her slip and fall case.

41. A jury trial was held in the Jackson lawsuit on November 9, 10 and 12, 2009.

42. During the trial, Respondent raised the statute of limitations as a defense to the Jackson lawsuit.

43. At the conclusion of the trial, the jury rejected the statute of limitations defense, finding that Ms. Jackson did not know, or could not have reasonably discovered, before 2007 that the Property had first been transferred to her and thereafter transferred from her to Reddberry.

44. At the conclusion of the trial, the jury found by clear and convincing evidence, that Respondent fraudulently misrepresented or failed to disclose to Ms. Jackson that the Property had been transferred from her to Reddberry.

45. The jury awarded compensatory damages to Ms. Jackson in the amount of \$9,858.72 and punitive damages in the amount of \$180,000 against Respondent and the other defendants.

46. Following the jury verdict and award, Respondent filed post-trial motions.

47. By Opinion and Order filed March 5, 2010, the Honorable Charles B. Smith denied Respondent's post-trial motions, other than reducing the jury's punitive damage award to \$20,000.

48. Respondent and the other defendants appealed the jury's verdict and award to the Superior Court of Pennsylvania.

49. By Memorandum Opinion filed December 23, 2010, the Superior Court affirmed the jury's verdict, but vacated the award and remanded the matter to the trial court on the issue of damages.

50. After the Superior Court denied an Application for Reargument, Respondent and the other defendants filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court on February 14, 2011. The Supreme Court denied the Petition by Order dated June 2, 2011.

51. By Opinion and Order dated July 15, 2011, Judge Smith reduced the jury's punitive damages award of \$180,000 to \$20,000 and left undisturbed the compensatory damages award of \$9,858.72.

52. Ms. Jackson filed an appeal from Judge Smith's July 15, 2011 Opinion and Order to the Superior Court of Pennsylvania.

53. On August 31, 2012, the Superior Court issued a Memorandum Opinion, with one dissenting vote, that reinstated the punitive damages award.

54. On September 11, 2012, Respondent filed with the Superior Court a Petition for Reargument En Banc.

55. For the jury to conclude that Respondent fraudulently misrepresented or failed to disclose to Ms. Jackson that the Property had been transferred from her to Reddberry, the jury necessarily determined that:

a. Respondent had Ms. Jackson sign the General Release without explaining to her that she was agreeing to settle her slip and fall claim against the Estate of Andre Hines in return for the Property.

b. When Ms. Jackson signed the signature page for the General Release, she was unaware that she was agreeing to settle her slip and fall claim against the estate in return for the Property.

c. Ms. Jackson was unaware that a Deed that transferred the Property from the Estate to Ms. Jackson had been prepared and subsequently filed, thereby resulting in the transfer of the Property from the Estate to her.

d. Respondent failed to disclose to Ms. Jackson before or after she signed the signature page for the Reddberry Deed that she was agreeing to transfer the Property from her to Reddberry.

e. When Ms. Jackson signed the signature page of the Reddberry Deed she was unaware that she was agreeing to transfer the Property from her to Reddberry.

f. On September 26, 1995, Respondent fraudulently misrepresented to Ms. Jackson that the \$1,500 check she received from him on that day was in settlement of her slip and fall case.

g. Based on Respondent's misrepresentation, Ms. Jackson believed that the \$1,500 check she received from Respondent was in settlement of her slip and fall case.

56. Respondent did not advise Ms. Jackson to seek the advice of independent counsel prior to the Property being transferred from Ms. Jackson to Reddberry and considered Ms. Jackson to be his client on September 26, 1995, the date that he presented Ms. Jackson with a \$1,500 check.

57. Before Andre Hines died on September 3, 1992, he had torn down several buildings that had been on the Property.

58. Respondent's law office was adjacent to the Property.

59. The razing of the buildings on the Property damaged a wall that was shared by the Property and Respondent's law office, resulting in damage to the law office.

60. In an August 19, 1993 letter to Mr. Paris Hines, the brother of Andre Hines, Respondent complained that the demolition of the buildings on the Property resulted in damage to Respondent's law office. Respondent stated that he had been complaining to Paris Hines about the dilapidated condition of the Property.

61. In a November 10, 1994 letter to Mr. Paris Hines, Respondent offered to purchase the Property for \$1,500 and to "assume responsibility of the back real estate taxes," which Respondent had determined were in excess of \$5,000.

62. Ms. Jackson was interested in obtaining money from her slip and fall case.

63. Ms. Jackson had not suggested to Respondent that she settle her slip and fall claim against the Estate for the Property.

64. Respondent had demonstrated an interest in acquiring the Property.

65. Respondent did not act to ascertain if the Estate had any assets or if the Property was insured.

66. Respondent agreed to absorb the costs for filing the Cleveland lawsuit and the transfer taxes for recording the Jackson Deed because of his friendship with the Jacksons.

67. Respondent was not present to: witness Ms. Jackson's signature on the General Release; instruct Ms. Jackson to read that document; and explain that document to Ms. Jackson.

68. Ms. Jackson, who was not required to sign the Jackson Deed in order to obtain title to the Property, did not receive a copy of the Jackson Deed from the Recorder of Deeds because her correct address was not listed on the Jackson Deed.

69. Respondent is the sole owner of Reddberry.

70. Respondent formed Reddberry with the intention that Reddberry would be the record owner of the various properties that Respondent had acquired and would acquire in the future.

71. The only property acquired by Reddberry was the Property.

72. In May 2008, the estate filed a lawsuit against Respondent, Mr. Reddy, and Reddberry, alleging that Reddberry's acquisition of the Property occurred through fraudulent means.

73. In 2011, Respondent settled that lawsuit by paying the sum of \$60,000 to the Estate, in return for the Estate's relinquishing any claim it had to the Property.

74. By Order dated April 12, 2012, the Honorable Charles B. Smith approved the settlement and the Reddberry Deed.

75. In April 2007, The Philadelphia Inquirer published an article written by Nancy Phillips, which reported on Respondent owning properties throughout the City of Philadelphia, Respondent's failure to properly maintain those properties, and his leasing of those properties to various individuals.

76. From June 2007 through September 28, 2012, The Philadelphia Inquirer, the Philadelphia Daily News, and The Legal Intelligencer published articles about charges brought against Respondent by the Judicial Conduct Board based on Respondent using Court staff to assist him in his personal real estate business, the outcome of the proceedings before the Court of Judicial Discipline, Respondent's representation of Ms. Jackson in her slip and fall case, the circumstances that led to Reddberry acquiring the Property, and the outcome of the Jackson lawsuit, including the decision of the Superior Court of Pennsylvania to reinstate the jury's \$180,000 punitive damage award.

77. The articles published about Respondent negatively impacted the public's perception of the legal profession and the judiciary.

78. Following Respondent's admission to the bar in 1976, he began practicing law as an associate with Cecil Moore, Esquire, a civil rights and criminal defense lawyer. Respondent began his own practice in 1979, mainly in the area of criminal defense.

79. During the years that he was practicing law, Respondent helped to mentor many young minority attorneys.

80. Respondent presented the testimony of 20 character witnesses. They generally testified regarding Respondent's reputation in the community as a peaceful and law-abiding citizen and as a truthful and honest person. Several character witnesses testified about Respondent's involvement with community work.

81. Of the character witnesses, thirteen were unaware of the charges of misconduct that were the subject of the disciplinary hearing.

### III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. Former RPC 1.4(b)(effective 4/1/88) – A lawyer shall explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation.

2. Former RPC 1.7(b)(effective 4/1/88) - A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless (1) the lawyer reasonably believes the representation will not be adversely affected and (2) the client consents after full disclosure and consultation.

3. Former RPC 1.8(a)(effective 4/1/88) – A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client; (2) the client is advised and is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and (3) the client consents in writing thereto.

4. RPC 8.4(a) – It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

5. RPC 8.4(c) – it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

6. In Office of Disciplinary Counsel v. Kiesewetter, 889 A.2d 47 (Pa. 2005), the Supreme Court held that Petitioner could use the collateral estoppel doctrine in a disciplinary hearing to prove that an attorney had violated the Rules of Professional Conduct based on a civil fraud finding.

7. There is no unfairness to Respondent in applying the collateral estoppel doctrine.

8. Respondent has met the five factors for applying the collateral estoppel doctrine.

9. Petitioner can use the fraud verdict, through application of the collateral estoppel doctrine, to prove that Respondent violated the Rules of Professional Conduct charged in the Petition.

#### IV. DISCUSSION

This matter is before the Board for consideration of the Petition for Discipline filed against Respondent charging him with violations of former RPC 1.4(b); former RPC 1.7(b); former RPC 1.8(a); and RPC 8.4(a); and RPC 8.4(c). Petitioner has the burden of proving ethical misconduct by a preponderance of evidence that is clear and satisfactory. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). Petitioner's evidence, consisting of Joint Stipulations, exhibits, and Respondent's testimony proves that

Respondent violated the Rules as charged in the Petition for Discipline. Petitioner relied on the civil fraud verdict against Respondent in Cleveland v. Berry, in the Court of Common Pleas of Philadelphia County to meet its burden, pursuant to Office of Disciplinary Counsel v. Kiesewetter, 889 A.2d 47 (Pa. 2005) (permitting offensive use of collateral estoppel in disciplinary action).

The record demonstrates that in 1995, Respondent was in private practice in Philadelphia and represented a client, Denise Jackson, *nee* Cleveland, in a slip and fall case. The slip and fall occurred on the property adjacent to Respondent's law office. Respondent deceived Ms. Jackson by allowing her to settle her slip and fall case without knowledge that her settlement included that adjacent property located at 1533 West Girard Avenue in Philadelphia. Respondent caused Ms. Jackson, again without her knowledge, to transfer that property to Reddberry Development Corporation, a company owned by Respondent. Respondent misled Ms. Jackson to believing that her slip and fall case had settled for the sum of \$1,500. Sometime in 2007, Ms. Jackson learned of the actual circumstances surrounding the settlement of her slip and fall case. Ms. Jackson commenced a lawsuit on September 4, 2007 against Respondent in the Philadelphia Court of Common Pleas. The jury found by clear and convincing evidence that Respondent fraudulently misrepresented or failed to disclose to Ms. Jackson that the property had been transferred from her to Respondent's company.

While Respondent objected to the use of offensive collateral estoppel and questioned its overall wisdom, he does not contest that it applies in this case and concedes that the Kiesewetter decision is on point. The Hearing Committee concluded in its Report that it was bound under Kiesewetter to accept Petitioner's version of events and ruled accordingly that Respondent violated the Rules charged in the Petition.

In Kiesewetter, the Supreme Court of Pennsylvania held that offensive collateral estoppel could be applied in a disciplinary matter. Offensive collateral estoppel “occurs when the plaintiff seeks to foreclose the defendant from litigating an issue the defendant has previously litigated unsuccessfully in an action with another party.” Kiesewetter, 889 A.2d at 51. The Court considered four factors “to ensure fairness in application [of the doctrine]: (1) whether the plaintiff could have joined the earlier action; (2) whether the subsequent litigation was foreseeable and therefore the defendant had an incentive to defend the first action vigorously; (3) whether the judgment relied upon as a basis for collateral estoppel is inconsistent with one or more previous judgments in favor of the defendant, and (4) whether the second action would afford the defendant procedural opportunities unavailable in the first action that could produce a different result.” Kiesewetter, 889 A.2d at 52 (citing to Parklane Hosiery Co., Inc. v. Shore, 439 A.2d. 322, 329, 331 (1979)).

Upon review of the four factors, the Board concludes that the factors have been satisfied in the instant matter and no unfairness would arise from the offensive application of collateral estoppel. We must next consider whether Petitioner has satisfied the elements of the doctrine of collateral estoppel. This doctrine precludes re-litigation of an issue determined in a previous action if “(1) the issue decided in the prior case is identical to the one presented in the later action; (2) there was a final adjudication on the merits.(3) the party against whom the plea is asserted was a party or in privity with a party in the prior case; (4) the party or person in privity to the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceedings; (5) the determination in the prior proceeding was essential to the judgment.” Kiesewetter, 889 A.2d at 50-51.

Again, the Board finds that the elements are satisfied in the instant matter. Respondent had the full opportunity to litigate the subject of the instant disciplinary action in the underlying lawsuit against him, that being his conduct related to the settlement of the Jackson lawsuit and Ms. Jackson's transfer of the Property to Reddberry. The civil fraud verdict against Respondent compels us to conclude that he violated the Rules as charged in the Petition for Discipline.

Respondent violated former RPC 1.4(b) by failing to explain to Ms. Jackson that she had acquired the Property and that she had transferred the Property to Reddberry for \$1,500, thereby preventing Ms. Jackson from making an informed decision regarding the outcome of her slip and fall case. Respondent violated former RPC 1.7(b) by representing Ms. Jackson when Respondent's own interests in the Property materially limited his ability to represent Ms. Jackson. Respondent violated former RPC 1.8(a) by entering into a business transaction with Ms. Jackson without fully disclosing the terms of the transaction to Ms. Jackson in writing and advising her to seek the advice of independent counsel. Respondent violated RPC 8.4(a) and 8.4(c) by violating the rules, or assisting others in doing so, and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. The Hearing Committee noted that while the majority of the Rules violations could have been established by Petitioner in the absence of the jury verdict, the violation of 8.4(c) would have posed a more difficult issue without the jury verdict, upon which Petitioner relied almost exclusively. The Board concurs with the Committee that the outcome may well have been different; however, we are precluded by the precepts of Kiesewetter from such an analysis.

Having concluded that Respondent violated the Rules of Professional Conduct, we turn to the appropriate sanction to address such misconduct. For the reasons

that follow, we are persuaded that a suspension of one year and one day is warranted in this matter.

Aggravating and mitigating factors are appropriate considerations in a disciplinary matter. In re Anonymous No. 35 DB 88, 8 Pa. D. & C. 4<sup>th</sup> 344 (1990). Respondent presented mitigation in the form of character evidence and good works in the community. Some twenty character witnesses testified for Respondent. These witnesses were from all walks of life, including lawyers, clients, and community activists. While this evidence is tempered by the fact that thirteen of the witnesses were not aware of the charges of misconduct that were the subject of the disciplinary hearing, some did indicate they were clearly aware of the acts of misconduct and offered credible testimony of Respondent's good character.

The Hearing Committee gave consideration to the "significant passage of time" from when Respondent engaged in the misconduct in 1995 and when disciplinary charges were initiated in 2012. Again, this consideration is tempered by the fact that Ms. Jackson did not learn of Respondent's fraudulent activities until 2007.

Respondent practiced law from 1976 until he was elected to the bench in 1996 and has no record of professional discipline. Through the years, he helped mentor numerous young minority attorneys. Respondent seeks credit for his many years of practice as a lawyer and as a judicial officer. However, while serving as an elected judge, he was suspended from his judicial office for a period of four months in 2009. The publicity generated by this suspension and the proceedings in the Jackson lawsuit had a negative impact on the public's perception of the legal profession and judiciary. This constitutes an aggravating factor in the instant proceeding.

In evaluating professional discipline, each case is to be decided individually on its own unique facts. Office of Disciplinary Counsel v. Lucarini, 427 A.2d 186 (Pa. 1983). Nevertheless, as the Supreme Court recently held, the system must strive for consistency in final discipline. Office of Disciplinary Counsel v. Cappuccio, 48 A.3d 1231 (Pa. 2012). The Board has carefully reviewed the cases cited by the parties. It is apparent that there is no prior case with facts identical to that of Respondent. The misconduct in this matter involved committing fraud against a client. Respondent imposed a business transaction on Ms. Jackson without her knowledge or consent. This is serious misconduct and cannot be remedied in the eyes of the public by private discipline. Respondent must be required to apply for reinstatement and demonstrate that he is fit to practice law in Pennsylvania. A suspension of one year and one day serves to protect the public and preserve the integrity of the legal profession.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Willis W. Berry, Jr., be Suspended from the practice of law for a period of one year and one day.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

By:   
David A. Nasatir, Board Member

Date: October 30, 2013

Board Members Lawrence and Rosenberg dissent and would recommend a period of suspension for less than one year and one day.

Board Member Cali did not participate in the adjudication.